

Assembly Constitutional Amendment

No. 1

Introduced by Assembly Member Dymally

December 4, 2006

Assembly Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing and adding Article XXI thereof, relating to redistricting.

LEGISLATIVE COUNSEL'S DIGEST

ACA 1, as introduced, Dymally. Elections: redistricting.

The California Constitution requires that each Member of the Senate, Assembly, Congress, and State Board of Equalization be elected from a single-member district. Existing provisions of the California Constitution require the Legislature, in the year following the year in which the federal census is taken at the beginning of each decade, to adjust the boundary lines of the state Senate, Assembly, congressional, and State Board of Equalization districts in accordance with specified standards.

This measure would delete these existing requirements, and would instead require the appointment of the Independent Redistricting Commission, composed of 5 members, that would be charged with establishing, by February 28 of each year ending in the number one, congressional, Assembly, Senate, and State Board of Equalization districts of equal population in compliance with the United States Constitution, pursuant to a mapping process for each district in accordance with specified goals. The measure would require the commission to approve a redistricting plan that includes the final maps for all districts. The measure would require the Legislature to adjust

the boundaries of the districts of any of these offices for which the commission fails to approve a final map within one year after the deadline for the commission's appointment.

This measure would provide that certain records of the commission are public records and would require the commission to hold public hearings.

This measure would grant the California Supreme Court original and exclusive jurisdiction over all challenges to a redistricting plan adopted by the commission, and would authorize an affected elector to file a petition for a writ of mandate or prohibition within 45 days either after a redistricting plan has been certified by the commission to the Secretary of State or has been enacted by the Legislature. If a redistricting plan is held by the court to be unconstitutional, this measure would require the court to provide relief as it deems appropriate to remedy any violation and to otherwise accomplish the purposes of this measure.

This measure would require the Governor in 2010 and annually thereafter, to include in the Governor's Budget submitted to the Legislature an amount of funding sufficient to meet estimated annual expenses of the redistricting process, and would require the Legislature to make the necessary appropriation in the annual Budget Bill. It would authorize the commission to contract and to hire staff and consultants, including legal representation. It would provide that commissioners are eligible for reimbursement of expenses pursuant to law.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

- 1 WHEREAS, The Legislature hereby finds and declares that the
- 2 United States Supreme Court, in *League of United Latin American*
- 3 *Citizens v. Perry* (2006) 165 L. Ed.2d 609, reaffirmed that Sections
- 4 2 and 4 of Article I of the United States Constitution give the states
- 5 primary responsibility for reapportionment and that
- 6 reapportionment is primarily the duty and responsibility of a state
- 7 through its legislature or other body; and
- 8 WHEREAS, The Legislature hereby finds and declares that
- 9 reapportionment is one of the most significant acts a state can
- 10 perform to ensure citizen participation in republican
- 11 self-governance and to comply with the one-person, one-vote
- 12 requirement; and
- 13 WHEREAS, The Legislature hereby finds and declares that
- 14 California law requires the Legislature, in the year following the

1 year in which the federal decennial census is taken, to adjust the
2 boundary lines of the Senate, Assembly, congressional, and State
3 Board of Equalization districts in conformance with the following
4 standards: (1) each member of the Senate, Assembly, Congress,
5 and the State Board of Equalization shall be elected from a
6 single-member district, (2) the population of all districts of a
7 particular type shall be reasonably equal, (3) every district shall
8 be contiguous, (4) districts of each type shall be numbered
9 consecutively commencing at the northern boundary of the state
10 and ending at the southern boundary, and (5) the geographical
11 integrity of any city, county, or city and county or of any
12 geographical region shall be respected to the extent possible
13 without violating the requirements of state or federal law; and

14 WHEREAS, The Legislature hereby finds and declares that in
15 1926, the people of California passed the so-called Federal Plan
16 of Apportionment that divided the state into 40 Senatorial districts
17 based upon counties and 80 Assembly districts as equal in
18 population as possible; and

19 WHEREAS, The Legislature hereby finds and declares that it
20 delegates its primary duty and responsibility for the
21 reapportionment of California's congressional, state legislative,
22 and board of equalization districts to a five-member Independent
23 Redistricting Commission that would establish congressional,
24 Assembly, Senate, and State Board of Equalization districts to
25 comply with the one-person, one-vote requirement and to draw
26 fair and impartial lines; and

27 WHEREAS, The Legislature hereby finds and declares that if
28 the five-member Independent Redistricting Commission is
29 deadlocked in creating a reapportionment plan, the Legislature
30 may exercise its prerogatives under Sections 2 and 4 of Article I
31 of the United States Constitution, as stated by the United States
32 Supreme Court in its decision in *League of United Latin American*
33 *Citizens v. Perry*; now, therefore, be it

34 *Resolved by the Assembly, the Senate concurring*, That the
35 Legislature of the State of California at its 2007–08 Regular
36 Session commencing on the fourth day of December 2006,
37 two-thirds of the membership of each house concurring, hereby
38 proposes to the people of the State of California, that the
39 Constitution of the State be amended as follows:

40 First—That Article XXI thereof is repealed.

1 Second—That Article XXI is added thereto, to read:

2
3 ARTICLE XXI

4 Reapportionment of Senate, Assembly, Congressional, and State
5 Board of Equalization Districts
6

7 SECTION 1. (a) Each member of the Senate, Assembly,
8 Congress, and State Board of Equalization shall be elected from
9 a single-member district.

10 (b) By February 28 of each year ending in the number one, the
11 Independent Redistricting Commission shall be established to
12 provide for the redistricting of Senate, Assembly, congressional,
13 and State Board of Equalization districts. As used in this article,
14 “commission” means the Independent Redistricting Commission.

15 (c) The commission shall consist of five members, and all of
16 the following shall apply:

17 (1) No more than three members of the commission may be
18 members of the same political party.

19 (2) Of the five commission members appointed pursuant to
20 Section 2, no more than two may reside in the same county.

21 (3) Each commission member shall be a registered California
22 voter who has been continuously registered with the same political
23 party, or as unaffiliated with a political party, for three or more
24 years immediately preceding appointment.

25 (4) Each commission member shall commit to applying this
26 article in an honest, independent, and impartial fashion and to
27 upholding public confidence in the integrity of the redistricting
28 process.

29 (d) (1) Within the three years immediately preceding
30 appointment, neither a commission member, nor any member of
31 his or her immediate family, may have done any of the following:

32 (A) Been appointed to, elected to, or have been a candidate for
33 any other public office.

34 (B) Served as an officer, paid staff, or paid consultant of the
35 campaign committee of a candidate for public office.

36 (C) Been a registered lobbyist or an employee of, or a consultant
37 to, a registered lobbyist.

38 (2) Legislative and congressional staff and consultants, persons
39 under a contract with the Legislature; and any person who has
40 contributed ten thousand dollars (\$10,000) or more to, has a

1 financial relationship with, or is an immediate family member of,
2 the Governor, a Member of the Legislature, a Member of Congress,
3 or a member of the State Board of Equalization, are not eligible
4 to serve as members of the commission.

5 (3) A member of the commission shall be ineligible, during his
6 or her term of office and for three years thereafter, to hold public
7 office in this State or to register as a lobbyist.

8 (4) For purposes of this subdivision, a member of a person's
9 "immediate family" is one with whom the person has a bona fide
10 relationship established through blood, marriage, or adoption.

11 SEC. 2. (a) The officers and entities that make appointments
12 to the commission shall work to ensure that the commissioners are
13 representative of this state's racial, ethnic, cultural, geographic,
14 and gender diversity.

15 (b) Each of the following shall appoint one member of the
16 commission:

17 (1) The Governor.

18 (2) The Senate Committee on Rules.

19 (3) The Speaker of the Assembly.

20 (4) The Chairperson of the California Democratic Party.

21 (5) The Chairperson of the California Republican Party.

22 (c) The members of the commission shall select a chair and a
23 vice chair from among their members.

24 (d) The term of office of each member of the commission
25 expires upon the appointment of the first member of the succeeding
26 commission.

27 SEC. 3. (a) After having been served written notice and
28 provided with an opportunity for a response, a member of the
29 commission may be removed by the Governor, with the
30 concurrence of two-thirds of the Senate, for substantial neglect of
31 duty, gross misconduct in office, or inability to discharge the duties
32 of office.

33 (b) (1) If a member of the commission vacates his or her office
34 or is removed pursuant to subdivision (a) prior to the completion
35 of his or her term for any reason, the appointing authority that,
36 pursuant to Section 2, appointed the member shall fill the vacancy
37 within the first 30 days after the vacancy occurs. The appointing
38 authority shall work to ensure diversity and fairness in filling the
39 vacancy.

1 (2) The newly appointed member shall serve out the remainder
2 of the original term of the vacating member. If the vacating member
3 was the chair of the commission, the commission shall select a
4 new chair.

5 SEC. 4. (a) The activities of the commission are subject to all
6 of the following:

7 (1) Three members of the commission, one of whom may be
8 the chair or vice chair, shall constitute a quorum.

9 (2) Three or more affirmative votes shall be required for any
10 official action.

11 (3) The commission shall comply with the Bagley-Keene Open
12 Meeting Act (Article 9 (commencing with Section 11120) of
13 Division 3 of Title 2 of the Government Code), or its successor.
14 The commission shall provide not less than seven days' public
15 notice for each meeting.

16 (4) The records of the commission pertaining to redistricting,
17 and all data considered by the commission for that purpose, are
18 public records open to inspection by members of the public upon
19 request, except that the commission may withhold from public
20 inspection preliminary drafts, notes, and communications between
21 commission members, staff, and consultants.

22 (5) Any written or verbal communication with a commission
23 member outside of a public hearing, other than by staff or by legal
24 counsel, is prohibited as to any matter on which the commission
25 is required to meet pursuant to paragraph (3). This paragraph does
26 not prohibit any communication between commission members
27 that is permitted by the Bagley-Keene Open Meeting Act or its
28 successor to occur outside of a public hearing.

29 (b) The duties of the commission shall include all of the
30 following:

31 (1) To establish Senate, Assembly, congressional, and State
32 Board of Equalization districts pursuant to a mapping process for
33 each district that is in accordance with the goals specified in
34 paragraph (2).

35 (2) To establish districts pursuant to paragraph (1) as necessary
36 to achieve each of the following goals, prioritized according to the
37 following order:

38 (A) Congressional districts shall each have equal population
39 with other districts for the same office in compliance with the
40 United States Constitution.

1 Senate, Assembly, and State Board of Equalization districts shall
2 each have equal population with other districts for the same office
3 in compliance with the United States Constitution.

4 (B) Districts shall be established in compliance with the federal
5 Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 and following).

6 (C) Districts shall be geographically contiguous.

7 (D) District boundaries shall respect communities of interest to
8 the extent practicable.

9 (E) To the extent practicable, district lines shall use visible
10 geographic features and city and county boundaries.

11 (F) Districts shall be geographically compact to the extent
12 practicable.

13 (c) Party registration and voting history data shall be excluded
14 from the mapping process described in subdivision (b), but may
15 be used to test maps for compliance with this section. The places
16 of residence of incumbents or candidates may not be identified or
17 considered in the creation of a map pursuant to paragraphs (1) and
18 (2) of subdivision (b), but may be considered in establishing the
19 boundaries of final maps pursuant to subdivision (e).

20 (d) (1) The commission shall establish and implement an open
21 and noticed hearing process for public input and deliberation. The
22 hearing process shall provide for public hearings during at least
23 the following three stages: (A) one or more hearings to receive
24 public input before the commission draws any maps; (B) one or
25 more hearings following the initial drawing and display of
26 commission maps; and (C) one or more hearings following the
27 drawing and display of proposed final maps, but prior to the
28 approval of final maps by the commission pursuant to subdivision
29 (e).

30 (2) The commission shall propose and implement a plan to
31 provide the public with access to the United States census data,
32 and to make software available to the public for drawing maps and
33 providing input through the hearing process. During the second
34 stage of the hearing process, the commission shall display the maps
35 created pursuant to subdivision (b) of Senate, Assembly,
36 congressional, and State Board of Equalization districts to the
37 public for comment for no less than 30 days after the first date of
38 display, in a manner designed to achieve the widest public
39 dissemination reasonably possible. Either the Senate or the
40 Assembly may, within this period, recommend proposed maps to

1 the commission by majority or minority report, which
2 recommendations shall be considered by the commission.

3 (e) The commission shall, after consideration of public
4 comments and recommendations made by the Senate or Assembly
5 pursuant to subdivision (d), approve a redistricting plan that
6 includes the boundaries of the final maps for Senate, Assembly,
7 congressional, and State Board of Equalization districts, and shall
8 certify those districts to the Secretary of State. The redistricting
9 plan shall be approved by a majority vote of the membership of
10 the commission.

11 (f) The commission shall issue, with its redistricting plan, a
12 written report that explains the basis on which the commission
13 made its decisions in achieving compliance with the goals listed
14 in paragraph (2) of subdivision (b), particularly where compliance
15 with one goal resulted in less than full compliance with another.
16 The report shall define or describe, as applicable, the terms and
17 standards used in drawing the boundaries of the final maps.

18 (g) If the commission does not issue a redistricting plan that
19 includes the boundaries of the final maps for Senate, Assembly,
20 congressional, and State Board of Equalization districts by
21 February 28 of the year following the year in which the commission
22 was established, as to any office for which the commission failed
23 to establish those maps by that date, the Legislature shall adjust
24 the boundary lines of the districts pursuant to the goals specified
25 in paragraph (2) of subdivision (b) of Section 4.

26 SEC. 5. (a) In 2010, and annually thereafter, the Governor
27 shall include in the Governor's Budget submitted to the Legislature
28 pursuant to Section 12 of Article IV an amount of funding
29 sufficient to meet the estimated annual expenses of the subsequent
30 redistricting process occurring pursuant to this article, and shall
31 make adequate office space available for the operation of the
32 commission. The Legislature shall make the necessary
33 appropriation in the annual budget bill.

34 (b) The commission, with fiscal oversight from the Department
35 of Finance or its successor, has procurement and contracting
36 authority and may hire staff and consultants, exempt from the civil
37 service, for the purposes of this article, including legal
38 representation.

39 (c) The commission has standing in legal actions regarding a
40 redistricting plan or to determine whether funds or other resources

1 provided for the operation of the commission are adequate. The
2 commission has sole authority to determine whether the Attorney
3 General or legal counsel hired or selected by the commission shall
4 represent the people of California in the legal defense of a
5 redistricting plan.

6 (d) The commission shall establish criteria for the hiring and
7 removal of staff and consultants. The commission may apply
8 subdivision (d) of Section 1 to the hiring of staff and consultants
9 to the extent practicable.

10 (e) (1) The California Supreme Court has original and exclusive
11 jurisdiction in all proceedings in which a redistricting plan adopted
12 pursuant to this article is challenged.

13 (2) Any affected elector may challenge a redistricting plan by
14 filing a petition for a writ of mandate or writ of prohibition, within
15 45 days either after the plan has been certified by the commission
16 to the Secretary of State or after the Legislature has enacted a
17 redistricting plan pursuant to subdivision (g) of Section 4, to bar
18 the Secretary of State from implementing the plan on the grounds
19 that the filed plan violates this Constitution, the United States
20 Constitution, or any federal statute.

21 (3) The court shall act expeditiously on the petition. If the court
22 determines that a redistricting plan adopted by the commission
23 violates this Constitution, the United States Constitution, or any
24 federal statute, the court shall fashion the relief that it deems
25 appropriate to remedy any such violation and otherwise accomplish
26 the purposes of this article.

27 SEC. 6. (a) A member of the commission may receive per
28 diem compensation for each day in which the member attended a
29 meeting of the commission, at the rate received by Members of
30 the Legislature. Members of the commission may also receive
31 reimbursement for travel expenses incurred in connection with the
32 duties performed pursuant to this article.

33 (b) The commission may not meet or incur expenses after the
34 redistricting plan becomes final pursuant to subdivision (e) of
35 Section 4, except with respect to any pending litigation or federal
36 government approval concerning the plan, to revise districts if
37 required by court order, or to revise districts if the number of
38 Senate, Assembly, congressional, or State Board of Equalization
39 districts is changed.

- 1 (c) For purposes of this article, “day” means a calendar day,
- 2 except that if the final day of a period within which an act is to be
- 3 performed is a Saturday, Sunday, or holiday, the period is extended
- 4 to the next day that is not a Saturday, Sunday, or holiday.
- 5 (d) This article is self-executing.